

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of N.D.P., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHAEL DOBBY,

Respondent-Appellant.

UNPUBLISHED

November 12, 2002

No. 238424

Oakland Circuit Court

Family Division

LC No. 2000-633230-NA

Before: Murray, P.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (f), (g), and (j). We affirm.

Initially, we note that the trial court did not erroneously assume jurisdiction of the minor child under MCL 712A.2(b)(1). Respondent's arguments that he was unable to provide care for the child because he was incarcerated and that the child was not "without proper custody" within the meaning of the statute are without support. Rather, the termination statute contemplates the termination of parental rights of an incarcerated parent. See MCL 712A.19b(3)(h). In fact, the trial court properly assumed jurisdiction under the facts of this case as respondent, when able to do so, made no effort to provide proper care or support for the minor child.

The trial court did not err in finding that the statutory grounds for termination of respondent's parental rights found in MCL 712A.19b(3)(a)(ii), (g), and (j) were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). First, there was ample evidence to support the trial court's finding that respondent had deserted the minor child for more than ninety-one days and did not seek custody of her during that period. MCL 712A.19b(3)(a)(ii). It is undisputed that respondent did not see the child after she was approximately three weeks old. From that time, whether incarcerated or not, respondent did not attempt to contact the child, provide for her financially, or seek custody of her.

This evidence also supports the trial court's finding that respondent failed to provide care or custody for the child and that there was no reasonable expectation that he would do so within a reasonable time considering the child's age. MCL 712A.19b(3)(g). During the three weeks

that respondent was present for the child's life, he spent little time caring for her. Instead, he drank alcohol and smoked marijuana with minors in the home when the child was present. Moreover, after having been incarcerated, paroled, and again re-incarcerated for a parole violation, respondent never attempted to contact the child, provide for her financially, or present a plan for her to the FIA.

Last, there was also clear and convincing evidence to support the trial court's finding that there was a reasonable likelihood, based on respondent's conduct or capacity, that the child would be harmed if placed in respondent's care. MCL 712A.19b(3)(j). Respondent has an extensive criminal history, including a conviction for child sexual abuse and attempted kidnapping. He has used drugs in the presence of minors, sold drugs, and has a conviction involving the sale of drugs. Thus, the trial court did not clearly err in finding clear and convincing evidence to terminate respondent's parental rights.¹

Furthermore, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the best interests of the minor child, MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), nor was respondent denied the opportunity to present evidence on this issue. As previously discussed, respondent has had virtually no contact with the child in the five years of her life, has an extensive history of criminal activity, and has failed to financially support the child with no present plan for doing so in the future. Therefore, the trial court did not clearly err in its determination that termination was not contrary to the child's best interests.

We also hold that the trial court did not abuse its discretion in allowing the admission of statements regarding respondent's conviction of criminal sexual conduct involving a child. Although the court misstated certain facts regarding respondent's prior child sexual abuse conviction, such error was harmless as the recitation had no significant impact on the outcome because there was no dispute regarding respondent's conviction and the court considered the conviction only for its bearing on the issue of a reasonable likelihood, based on respondent's conduct or capacity, of harm to the child if returned to respondent's care. Accordingly, the trial court did not err in terminating respondent's parental rights to the minor child.

Affirmed.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Richard A. Bandstra

¹ Although the trial court erred in finding that MCL 712A.19b(3)(f) was also established, the error was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).